
SENATE BILL 5406

State of Washington 60th Legislature 2007 Regular Session

By Senators Kline, Fairley and Fraser

Read first time 01/18/2007. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to state employee whistleblower protection; and
2 amending RCW 42.40.020 and 42.40.050.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 42.40.020 and 1999 c 361 s 1 are each amended to read
5 as follows:

6 As used in this chapter, the terms defined in this section shall
7 have the meanings indicated unless the context clearly requires
8 otherwise.

9 (1) "Abuse of authority" means: Use of power and authority in a
10 manner that is intimidating, coercive, or demeaning; willful
11 malfeasance; or willful omission to perform a duty that adversely
12 affects the rights of another person and results in improper personal
13 gain or advantage.

14 (2) "Auditor" means the office of the state auditor.

15 ~~((2))~~ (3) "Employee" means any individual employed or holding
16 office in any department or agency of state government.

17 ~~((3))~~ (4) "Good faith" means a reasonable basis in fact for the
18 communication. "Good faith" is lacking when the employee knows or

1 reasonably ought to know that the report is malicious, false, or
2 frivolous.

3 ~~((4))~~ (5) "Gross mismanagement" means the arbitrary or capricious
4 exercise of management responsibilities in a manner grossly deviating
5 from the standard of care or competence that a reasonable person would
6 observe in the same situation.

7 (6) "Gross waste of funds" means to spend or use funds or to allow
8 funds to be used without valuable result in a manner grossly deviating
9 from the standard of care or competence that a reasonable person would
10 observe in the same situation.

11 ~~((5))~~ (7)(a) "Improper governmental action" means any action by
12 an employee undertaken in the performance of the employee's official
13 duties:

14 (i) Which is ~~((a))~~ a gross waste of public funds or resources as
15 defined in this section;

16 (ii) Which is in violation of federal or state law or rule, if the
17 violation is not merely technical or of a minimum nature; ~~((e))~~

18 (iii) Which is of substantial and specific danger to the public
19 health or safety;

20 (iv) Which is gross mismanagement as defined in this section;

21 (v) Which is an abuse of authority as defined in this section; or

22 (vi) Which impedes the communication of scientific opinion or
23 alters technical findings without scientifically valid justification.

24 (b) "Improper governmental action" does not include personnel
25 actions, for which other remedies exist, including but not limited to
26 employee grievances, complaints, appointments, promotions, transfers,
27 assignments, reassignments, reinstatements, restorations,
28 reemployments, performance evaluations, reductions in pay, dismissals,
29 suspensions, demotions, violations of the state civil service law,
30 alleged labor agreement violations, reprimands, claims of
31 discriminatory treatment, or any action which may be taken under
32 chapter 41.06 RCW, or other disciplinary action except as provided in
33 RCW 42.40.030.

34 ~~((6))~~ (8) "Substantial and specific danger" means a risk of
35 serious injury, illness, peril, or loss, to which the exposure of the
36 public is a gross deviation from the standard of care or competence
37 which a reasonable person would observe in the same situation.

1 ~~((7))~~ (9) "Use of official authority or influence" includes
2 taking, directing others to take, recommending, processing, or
3 approving any personnel action such as an appointment, promotion,
4 transfer, assignment, reassignment, reinstatement, restoration,
5 reemployment, performance evaluation, or any adverse action under
6 chapter 41.06 RCW, or other disciplinary action.

7 ~~((8))~~ (10) "Whistleblower" means an employee who in good faith
8 reports alleged improper governmental action to the auditor, initiating
9 an investigation under RCW 42.40.040. For purposes of the provisions
10 of this chapter and chapter 49.60 RCW relating to reprisals and
11 retaliatory action, the term "whistleblower" also means: (a) An
12 employee who in good faith provides information to the auditor in
13 connection with an investigation under RCW 42.40.040 and an employee
14 who is believed to have reported asserted improper governmental action
15 to the auditor or to have provided information to the auditor in
16 connection with an investigation under RCW 42.40.040 but who, in fact,
17 has not reported such action or provided such information; ~~((e))~~ (b)
18 an employee who in good faith identifies rules warranting review or
19 provides information to the rules review committee, and an employee who
20 is believed to have identified rules warranting review or provided
21 information to the rules review committee but who, in fact, has not
22 done so; or (c) an employee who refuses to obey an order that he or she
23 believes in good faith would require him or her to violate a law.

24 **Sec. 2.** RCW 42.40.050 and 1999 c 283 s 1 are each amended to read
25 as follows:

26 (1) Any person who ~~((is a whistleblower, as defined in RCW~~
27 ~~42.40.020, and who))~~ has been subjected to workplace reprisal or
28 retaliatory action and who is a whistleblower, as defined in RCW
29 42.40.020, or has reported the alleged occurrence of improper
30 governmental action to a public body is presumed to have established a
31 cause of action for the remedies provided under chapter 49.60 RCW.

32 (a) For the purpose of this section, "public body" means the
33 employee's supervisor, law enforcement, the attorney general,
34 legislative and executive branches of government, a court of law, and
35 other governmental authorities.

36 (b) For the purpose of this section, "reprisal or retaliatory
37 action" means but is not limited to any of the following:

1 (~~(a)~~) (i) Denial of adequate staff to perform duties;
2 (~~(b)~~) (ii) Frequent staff changes;
3 (~~(c)~~) (iii) Frequent and undesirable office changes;
4 (~~(d)~~) (iv) Refusal to assign meaningful work;
5 (~~(e)~~) (v) Unwarranted and unsubstantiated letters of reprimand or
6 unsatisfactory performance evaluations;
7 (~~(f)~~) (vi) Demotion;
8 (~~(g)~~) (vii) Reduction in pay;
9 (~~(h)~~) (viii) Denial of promotion;
10 (~~(i)~~) (ix) Suspension;
11 (~~(j)~~) (x) Dismissal;
12 (~~(k)~~) (xi) Denial of employment;
13 (~~(l)~~) (xii) A supervisor or superior encouraging coworkers to
14 behave in a hostile manner toward the whistleblower; and
15 (~~(m)~~) (xiii) A change in the physical location of the employee's
16 workplace or a change in the basic nature of the employee's job, if
17 either are in opposition to the employee's expressed wish.
18 (2) The agency presumed to have taken retaliatory action under
19 subsection (1) of this section may rebut that presumption by proving by
20 a preponderance of the evidence that the agency action or actions were
21 justified by reasons unrelated to the employee's status as a
22 whistleblower.
23 (3) Nothing in this section prohibits an agency from making any
24 decision exercising its authority to terminate, suspend, or discipline
25 an employee who engages in workplace reprisal or retaliatory action
26 against a whistleblower. However, the agency also shall implement any
27 order under chapter 49.60 RCW (other than an order of suspension if the
28 agency has terminated the retaliator).

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